



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**BY E-MAIL**

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**MAR 29 2019**

Michael E. Toner, Esq.  
Wiley Rein LLP  
1776 K Street N.W.  
Washington, DC 20006

RE: MUR 6824  
Wayne Brown

Dear Mr. Toner:

On April 20, 2018, we notified your clients, Wayne B. Brown, individually and in his capacity as a member and owner of WayneWorks, LLC, of potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act") arising out of payments made by Mr. Brown and WayneWorks to Eugene Yu, a candidate in the 2014 primary election in Georgia, under an agreement to purchase interest in real estate owned by Mr. Yu and his spouse. Specifically, we notified Mr. Brown of information that appeared to indicate that \$555,000 in payments made by Mr. Brown under the contract financed Mr. Yu's campaign and that the payments appeared to be contributions in the form of a loan constituting excessive contributions. At that time, we also provided Mr. Brown with a copy of the underlying complaint in this matter, a copy of a January 31, 2016 affidavit Mr. Brown provided in connection with this matter, and a copy of the agreement in order to provide Mr. Brown with an opportunity to respond. You filed a response on Mr. Brown's behalf on June 7, 2018.

After reviewing your clients' response and considering information obtained in an investigation of this matter, the Federal Election Commission ("Commission") found on March 26, 2019, reason to believe that Wayne B. Brown violated 52 U.S.C. § 30116(a)(1)(A), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

To expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to Mr. Brown a way to resolve this matter without the need for briefing the issue of whether or not the Commission

should find probable cause to believe that Mr. Brown violated the law.

If your client is interested in engaging in pre-probable cause conciliation, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1591 or [dodrowski@fec.gov](mailto:dodrowski@fec.gov) within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. You may also request additional information gathered by the Commission in the course of its investigation in this matter. See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

The Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement. Conciliation negotiations, prior to a finding of probable cause are limited to a maximum of 60 days. We may request that your client sign an agreement tolling the statute of limitations if negotiations ensue. Conversely, if your client is not interested in pre-probable cause conciliation, please advise counsel of that fact within seven days of receipt of this letter. We may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached or if your client is not interested in conciliation. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [https://transition.fec.gov/em/respondent\\_guide.pdf](https://transition.fec.gov/em/respondent_guide.pdf). We have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

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1. **FEDERAL ELECTION COMMISSION**

2. **FACTUAL AND LEGAL ANALYSIS**

3.  
4. **RESPONDENTS:** Wayne B. Brown

MUR: 6824

5.  
6. **I. INTRODUCTION**

7.  
8. This matter was generated by a complaint filed with the Federal Election Commission  
9. (the "Commission") concerning an allegation that federal candidate Eugene Yu lacked sufficient  
10. liquid assets to make more than \$730,000 in loans to his 2014 Congressional campaign from his  
11. personal funds.<sup>1</sup> See 52 U.S.C. § 30109(a)(1). The Commission's investigation indicates that  
12. Yu did not have sufficient personal funds to make the total reported loans to the Committee.  
13. Instead, Yu obtained a majority of funds from Wayne Brown, the Committee's campaign  
14. chairman, Brown's company, WayneWorks, LLC. Brown made payments to Yu using a  
15. combination of cashier's, personal, and company checks purportedly for the partial sale of a  
16. commercial property but the evidence indicates the payments actually constituted a loan. The  
17. majority of Brown's payments financed campaign expenses.

18. Accordingly, the Commission found reason to believe that Wayne B. Brown made  
19. excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A).

20. **II. FACTUAL AND LEGAL ANALYSIS**

21. Yu sought the Republican nomination for U.S. Senate in Georgia for the 2014 primary  
22. election, filing his statement of candidacy on July 11, 2013, but later dropped out of that race and  
23. announced on February 22, 2014, he would instead seek the Republican nomination for the U.S.

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<sup>1</sup> Compl. at 1. Yu's total reported loans to the Committee during the 2014 election cycle was \$790,704, somewhat higher than the amount alleged in the Complaint.

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1 House seat in Georgia's 12th Congressional District.<sup>2</sup> He lost the 2014 primary election. Yu  
2 established a new principal campaign committee when he unsuccessfully sought the Republican  
3 nomination for the same House seat again in 2016 and 2018.<sup>3</sup>

4 The Committee's fundraising was minimal from the beginning. As a result, Yu used  
5 funds from a variety of sources to pay for the Committee's expenses. Yu paid for some  
6 Committee expenses during the campaign's exploratory phase beginning in mid-May 2013, from  
7 a joint bank account he held with Ms. Yu. From May 27, 2013 through January 19, 2014, Yu  
8 also charged many Committee expenses on his wife's personal credit card account. On July 17,  
9 2013, days after filing his Statement of Candidacy, Yu transferred funds to the Committee's bank  
10 account from a personal bank account he held jointly with Ms. Yu into which Ms. Yu had just  
11 transferred funds from a draw on her individually-held HELOC. Beginning in August 2013,  
12 Brown soon became the source of most of the campaign's funds through payments made to Yu  
13 pursuant to a real estate transaction involving a commercial property jointly owned by the Yus in  
14 Augusta, Georgia. Brown's payments and Ms. Yu's HELOC loan and credit card advances  
15 comprised most of the Committee's funding.

16 **A. Contributions from Wayne B. Brown & WayneWorks, LLC**

17 **1. Wayne Brown's Role in the Yu's Campaign**

18 Wayne Brown is the owner and sole member of WayneWorks, LLC, a limited liability  
19 company, which manages and operates Brown's residential and commercial real estate business

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<sup>2</sup> Statement of Organization, Eugene Yu for Senate (July 11, 2013); Walter C. Jones, *Augusta Businessman Yu Switches Senate Campaign to House*, THE AUGUSTA CHRONICLE (Feb. 23, 2014); amended Statement of Organization, Eugene Yu for Congress (Mar. 4, 2014). Despite the Committee's amended Statement of Organization, the Committee's name continues to appear as "Eugene Yu for Senate" in the searchable committee database on the FEC website.

<sup>3</sup> Statement of Organization, Eugene for Congress (Jan. 26, 2016).

1 ventures.<sup>4</sup> Brown, a long-standing professional associate and friend of Yu, had a significant role  
2 in Yu's 2014 campaign, serving as the Committee's campaign chairman and handling its  
3 finances after mid-October 2013. The Committee treasurer of record, Donnie Miller, set up the  
4 Committee's bank account and initially performed bookkeeping duties — depositing  
5 contributions and signing checks, reviewing banks statements, and tracking the finances in a  
6 register — but Brown and a committee staffer prepared the Committee's FEC reports beginning  
7 with the Committee's first report, the 2013 October Quarterly.<sup>5</sup> Miller turned over responsibility  
8 for the Committee's finances and gave records in his possession to Brown after Brown became a  
9 signatory on the Committee's bank account on October 17, 2013. Thereafter, Brown signed most  
10 of the Committee's checks.

11 In the early months of the campaign, Brown, Miller, and Yu, and a changing group of  
12 consultants participated in weekly campaign meetings held in a conference room at Brown's  
13 business office. Brown rented space in his business office to the Committee, and some  
14 Committee operating expenses, such as office supplies and postage, were apparently charged  
15 through a business account of another of Brown's companies and billed to the campaign. Brown  
16 also served as the point of contact for some Committee vendors and had a campaign e-mail  
17 address.<sup>6</sup>

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<sup>4</sup> Response from Wayne Brown at 2 (June 7, 2018) ("Brown Resp."). Brown states WayneWorks is not taxed as a corporation. *Id.*

<sup>5</sup> Information in the Commission's possession indicates that although Miller did not prepare the Committee's reports or other documents such as Requests for Additional Information from the Commission, he signed them at the request of Yu and Brown. The Committee's reports continued to bear Miller's electronic signature long after the campaign ended.

<sup>6</sup> See, e.g., Amended Statement of Org., Eugene Yu for Congress at 2 (Mar. 4, 2014).

1                   **2.     The Real Estate Contract**

2                   Starting in August 2013, Brown made payments to Yu pursuant to a real estate  
3 transaction involving a commercial property on Bertram Road in Augusta, Georgia (the  
4 “Property”) that was jointly owned by the Yus. The transaction was documented in a “Contract  
5 for Partial Sale” (the “Contract” or the “transaction”) dated July 1, 2013, between Brown,  
6 through WayneWorks, LLC, and Ms. Yu with Yu’s consent.<sup>7</sup> The Contract gave Brown the  
7 option to purchase up to a 50% ownership interest in the Property for \$650,000 over the next  
8 year, and his ownership interest would increase as payments were made. Bank records show that  
9 Brown made fifteen payments to Yu totaling \$645,000 under the Contract from August 19, 2013,  
10 through September 14, 2014. Four of Brown’s earliest payments, totaling \$50,000, were  
11 deposited directly into the Committee’s account and refunded to him, as discussed further below.  
12 Yu deposited the rest of Brown’s payments into the Yus’ joint bank account, and then wrote  
13 checks to the Committee, or otherwise transferred funds or made deposits into the Committee’s  
14 account. The majority of Yu’s checks to the Committee were in the same amount as Brown’s  
15 payments.

16                   Of the \$645,000 paid by Brown under the Contract, \$555,000 can be traced to the  
17 campaign. The \$555,000 figure excludes the aforementioned earliest payments from Brown  
18 totaling \$50,000 that were directly deposited into the Committee’s account, three of which were  
19 payable to the Committee. These four payments were refunded to Brown on November 5, 2013,

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<sup>7</sup>                   The Contract is between WayneWorks, LLC, and Jonie Yu, and Brown’s checks are payable to Yu, even though the real property records filed with the Superior Court of Richmond County show that the Yus have jointly owned the Property since May 12, 2004. The Commission has independently verified through state and local records that the Property remains titled in both of the Yus’ names. Moreover, Brown states that the Yus jointly own the Property (Brown Resp. at 1-2) and that Yu consented to the Contract.

1 in connection with a *sua sponte* submission (“*Sua Sponte* Submission” or “Submission”) filed  
2 with the Commission in January 2014 on behalf of Brown and others by Yu’s first counsel. That  
3 Submission characterized the \$50,000 in payments as “excessive contributions.”<sup>8</sup> The  
4 Submission stated that the payments were made in connection with a real estate agreement  
5 between Yu and Brown, later identified as the Contract, and the mistaken belief those payments  
6 could be treated as Yu’s personal funds and paid directly to the Committee, instead of being first  
7 deposited into Yu’s personal account.

8 Brown states that sometime around the summer of 2013, Yu and Brown discussed a  
9 transaction involving the Property.<sup>9</sup> Information in the Commission’s possession indicates that  
10 when Brown asked Yu near the beginning of the campaign why Yu was not fundraising, Yu told  
11 Brown that he did not know how and asked if Brown could loan him money. Brown asked what  
12 Yu had as collateral, and Yu identified the Property. Information indicates that Yu and Brown  
13 worked out an agreement that Yu described as a “loan” and the Property as “collateral,” and said  
14 that they agreed Brown would provide funds to the campaign as needed.” Information indicates  
15 that Yu viewed the arrangement as a “line of credit” guaranteed by the value of the Property, and  
16 that Brown would write a check to Yu and Yu would write a check to the campaign. Indeed,  
17 Brown wrote the word “loan” on the memo line of Brown’s October 23, 2013 payment, a  
18 personal check to Yu in the amount of \$5,000; two months later, Brown’s name and the word  
19 “loan” were typed above the words “Purchaser/Purchased for” on Brown’s December 18, 2013,  
20 payment of \$50,000 that he made to Yu using a cashier’s check. On certain later payments made

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<sup>8</sup> *Sua Sponte* Submission at 2-3, Pre-MUR 569 (Dec. 6, 2013). Brown used the refund to make subsequent payments to Yu. Though the Submission is dated December 6, 2013, it was not received by the Commission until January 23, 2014. The Submission designated as Pre-MUR 569/ADR 701.

<sup>9</sup> Brown Resp.; Declaration of Wayne B. Brown ¶ 4 (“2nd Brown Aff.”).

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1 after the Committee's Submission, Brown wrote "Bertram Road Purchase" on the memo line.  
2 Information indicates that Yu and Brown agreed that Brown would be repaid with interest after  
3 the Property was sold and Brown agreed to wait until then to be repaid, and that the Committee's  
4 first counsel, retained during the campaign, advised them to draw up an agreement.

5 The Contract, apparently drafted by Brown,<sup>10</sup> provides Brown with "the right to  
6 purchase" within twelve months up to 50% of the Property's "total value of \$1.3 million dollars"  
7 for \$650,000. It simultaneously conveys ownership to Brown during the option period, stating  
8 that Brown will "earn ownership" as monies are paid under the Contract; it makes no reference to  
9 the timing of any payment. The Contract further provides that the Yus will "convey the  
10 percentage purchased" and record a marketable title and limited warranty deed with the county  
11 "at time of [Brown's] choosing." It further gives the Yus the right of first refusal to repurchase  
12 Brown's ownership interest for the amounts he paid plus 8% interest. Another provision states  
13 that if the Yus are unable to convey marketable title, they will not be required to expend funds to  
14 correct any title defects but need only cancel the agreement and return to Brown all payments he  
15 made and reimburse him for the costs of any surveys and title examination. The Contract places  
16 responsibility for all property taxes and utility costs on the Yus and permits them to continue to  
17 collect rental income unless the Property is developed, in which case Brown shares in the income  
18 but not the expenses.

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<sup>10</sup> See 2nd Brown Aff. ¶ 9 (stating Brown wanted to structure the agreement to give him an option to record ownership interest).

1           Brown disagrees that the real estate agreement was a loan, maintaining that the  
2 transaction was a sale of 50% interest in the Property pursuant to the Contract.<sup>11</sup> Brown states  
3 that the transaction involving the Property was a *bona fide* sale for which he paid “the usual and  
4 normal charge,” and he views it as unrelated to the campaign.<sup>12</sup> In an affidavit submitted with  
5 his response to a post-investigative notification letter, Brown states that Yu approached him  
6 about purchasing, rather than loaning, a 50% interest in the Property for \$650,000 in the summer  
7 of 2013.<sup>13</sup> Although he was “aware” Yu was considering a U.S. Senate run when he entered the  
8 Contract, Brown states that “from my perspective, Mr. Yu’s potential candidacy was irrelevant to  
9 the transaction.”<sup>14</sup> Brown attributes the periodic nature, variable amounts, and timing of the  
10 payments to the Contract’s structure and his business cash flow and not the campaign’s needs.  
11 Brown avers that he structured the Contract as a one-year option to purchase because he did not  
12 want to tie up \$650,000 in cash at once and made payments as cash became available to him.<sup>15</sup>

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<sup>11</sup> Brown states he made payments in accordance with the Contract “in exchange for the ownership interest in the Property” and “acquired such ownership interest as payments were made” and states that he “believed that [Yu] had a legal right to the funds of each payment” once Brown made them and acquired a proportionate ownership interest. Affidavit of Wayne B. Brown ¶¶ 2, 4 (“1st Brown Affidavit”) (Attached to Notification letter to Wayne B. Brown (Apr. 20, 2018)).

<sup>12</sup> Brown Resp. at 9-10.

<sup>13</sup> 2nd Brown Aff. ¶¶ 4, 6.

<sup>14</sup> *Id.* ¶ 10.

<sup>15</sup> *Id.* ¶¶ 8, 10.

1 Other evidence uncovered during the investigation and the contractual language itself,  
2 however, show that the transaction between Brown and Yu was intended to as a loan to provide  
3 Yu with funds for his campaign rather than a *bona fide*, arms-length sale.<sup>16</sup>

4 First, the Contract itself contains unusual provisions for a real estate transaction. Though  
5 styled as a partial sale, it also purports to be an option to purchase that provides Brown with “the  
6 right to purchase” within twelve months up to 50% of the Property’s value while simultaneously  
7 conveying proportionate ownership to Brown during the option period as monies are paid.  
8 Notably, the Contract provides that the Yus will “convey the percentage purchased” and record a  
9 marketable title and limited warranty deed with the county “at the time of [Brown’s] choosing,” a  
10 provision Yu’s second counsel characterized as “unconventional.” And, despite Brown’s  
11 accruing ownership interest, the Contract places responsibility for all property taxes and utility  
12 costs on the Yus and permits them to continue to collect rental income unless the Property is  
13 developed, in which case Brown shares in the income but not the expenses. Finally, the Contract

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<sup>16</sup> To aid in determining whether a violation took place in connection with a financial transaction, the Commission typically examines the facts and circumstances involved, including in matters involving financial transactions between a candidate and an individual or entity. *See, e.g.*, PC Br. at 4-10 and Conciliation Agreement, MURs 4128 and 4362 (Grant Lally/Lally for Congress, *et al.*) (Commission accepted a probable cause conciliation agreement where Respondents admitted, *inter alia*, knowingly and willfully accepting excessive contributions from candidate’s father in the form of proceeds from a purported sale of the candidate’s interest in real property reported as a personal loan to the Committee); Conciliation Agreement ¶¶ 22, 30-35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress) (Commission accepted a probable cause conciliation agreement in which Respondents admitted knowingly and willfully accepting excessive contributions from a former state senator involved in the campaign disguised as legitimate transactions, including consulting work never performed, a cattle sale that never occurred, and an option contract for partial interest in candidate’s artwork that, in fact, financed campaign media buys); Gen. Counsel’s Rept. #3 and Certification (Mar. 20, 2002), MUR 4825 (Gex Williams) (Commission closed the file after finding RTB that proceeds from a sale of ten acres of a candidate’s farm were excessive contributions based on a Commission-financed appraisal and title search establishing the purchaser had not paid more than the land’s fair market value); Factual and Legal Analysis at 7-12, MUR 7025 (Senator Mike Lee) (Commission found that no excessive contributions resulted from a bank’s waiver of the deficiency balance on a candidate’s home mortgage as part of a short sale or from the individual who purchased the home in the short sale and rented another home to the candidate because the factual circumstances indicated the transactions were not for campaign purposes).

1 permits the Yus to cancel the Contract and return *all payments* to Brown plus the costs, if any,  
2 Brown made for surveys and title examination without requiring them to clear the title.<sup>17</sup>

3 Second, despite Brown's payments and asserted ownership interest, the Yus have not  
4 conveyed to Brown or recorded with the clerk of the superior court a marketable title and limited  
5 warranty deed evidencing Brown's ownership interest.<sup>18</sup> The available information indicates that  
6 Brown had not yet exercised the "unconventional" contractual provision permitting him to  
7 choose when the Yus would convey and record his ownership interest because Brown preferred  
8 to remain a "silent owner" for personal and professional reasons due to the nature of the business  
9 operating on the Property. The business operating on the Property was identified as a nightclub,  
10 although Brown stated that he had included the option so as not to "expos[e] [him]self to the  
11 liability of a potentially uninsurable vacant building."<sup>19</sup> He confirms he has not elected to  
12 exercise the option and remains a "passive investor."<sup>20</sup> From the July 1, 2013 date of the  
13 Contract through December 2014, however, the Property was *not* vacant. Bank records and  
14 publicly available information show that a nightclub, XS Live, occupied the building from at

<sup>17</sup> This provision appears to be modified boilerplate language used in form real estate purchase and sale agreements that allow a *buyer* to terminate an agreement without penalty *prior to the payment of the purchase price* at closing if a seller fails to correct any title defect affecting marketability. See, e.g., Georgia Realtors Purchase and Sale Agreement at Pars. B1 and B3 available at [http://images.kw.com/docs/2/6/0/260467/1457366655434\\_2016SSOfferPackage.pdf](http://images.kw.com/docs/2/6/0/260467/1457366655434_2016SSOfferPackage.pdf). As written in this Contract, which contemplates Brown making periodic payments during the option year and allows him to choose when to request marketable title and a limited warranty deed, the Yus can simply cancel the agreement and return Brown's payments.

<sup>18</sup> A recent check of county records confirms that a new deed still has not been recorded.

<sup>19</sup> 2nd Brown Aff. ¶ 9. Brown stated that the Property contains a vacant building and parking lot, and, based on his commercial real estate experience, insuring property with a vacant building is expensive and often impossible. *Id.*

<sup>20</sup> Brown Resp. at 4-5; 2nd Brown Aff. ¶ 9.

1 least April 2013 through December 2014 and paid rent from beginning in April 2013 through  
2 mid-January 2015.<sup>21</sup>

3 Third, Brown acknowledges that he did not obtain an independent appraisal of the  
4 Property's value before executing the Contract.<sup>22</sup> Brown says he and Yu relied on their  
5 knowledge of local real estate market conditions, and Brown emphasized that Augusta National  
6 Golf Club's then-widely reported above-market purchases of nearby property influenced his view  
7 that the \$650,000 price was reasonable without need for an appraisal.<sup>23</sup> Brown states he did not  
8 request an appraisal because he considered the transaction as an opportunity to make a  
9 "speculative real estate investment with a potentially high return" in light of reported above-  
10 market property purchases by Augusta National of nearby properties that could drive up  
11 commercial real estate property prices if Augusta National continued with its purchases.<sup>24</sup>

12 However, since the date of the Contract, the Yus have listed the Property for sale at a  
13 much lower price than the \$1.3 million figure listed on the Contract and have taken actions  
14 seeking to further lower the Richmond County Board of Assessors' determination of the  
15 Property's fair market value. During the period Brown was making payments to Yu, Yu filed a

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<sup>21</sup> See XS Live Business License (showing XS Live had a liquor license through December 31, 2014). Following a renovation, a second nightclub, Mitty's, occupied the property from April 2015 through approximately May 2016. See Jenna Martin, *New Dance Club Aims at Appealing to Broader Audience*, THE AUGUST CHRONICLE (Apr. 22, 2015) and Mitty's Business License (showing Mitty's had an active liquor license through May 12, 2016).

<sup>22</sup> Brown Resp., 2nd Brown Aff. ¶ 6.

<sup>23</sup> 2nd Brown Aff. ¶ 5; see also *id.* ¶ 6.

<sup>24</sup> *Id.* ¶¶ 5-6. Brown's response details Augusta National's nearby purchases in the months before the Contract date, but those purchases were of residential properties abutting Augusta National that was turned into a parking lot. Brown Resp. at 2-3; see Cork Gaines, *A Family Keeps Turning Down Millions for Its House Next to the Masters Golf Course*, BUSINESS INSIDER (Apr. 7, 2018). The response also discusses sales of specific nearby commercial properties as support for Brown's belief that the \$1.3 million was a reasonable fair market valuation, but Brown does not attest in his affidavit that these particular sales influenced his view of the Property's value. See Brown Resp. at 10.



1 aggregate, exceeded \$2,600.<sup>31</sup> In addition, the Act prohibits any candidate or political committee  
2 from knowingly accepting any contribution or making any expenditure in violation of the  
3 provisions of Section 30116.<sup>32</sup>

4 Federal candidates may make unlimited contributions from their own “personal funds” to  
5 their authorized campaign committees.<sup>33</sup> The Act and Commission regulations provide that  
6 “personal funds” are (a) amounts derived from any asset that, under applicable State law, at the  
7 time the individual became a candidate, the candidate had legal right of access to or control over,  
8 and with respect to which the candidate had legal and rightful title or an equitable interest; and  
9 (b) income received during the current election cycle of the candidate, including proceeds from  
10 the sale of the candidate’s investments.<sup>34</sup>

11 The Act also provides that “any candidate . . . who receives a contribution, or any loan in  
12 connection with the campaign of such candidate for election . . . shall be considered, for purposes  
13 of [the] Act, as having received the contribution or loan . . . as an agent of his or her authorized  
14 committee.”<sup>35</sup> Here, the evidence obtained during the investigation shows that Brown’s  
15 payments under the Contract were intended to provide funds for Yu’s campaign, and the weight  
16 of the evidence indicates the payments were effectively a loan to Yu, rather than the proceeds  
17 from a *bona fide*, arms-length real estate sale. The evidence the Commission obtained is similar  
18 to evidence gathered in prior enforcement matters where the Commission reviewed the facts and

<sup>31</sup> See 52 U.S.C. § 30116(a)(1)(A); Contribution Limits for 2013-2014, <https://www.fec.gov/updates/contribution-limits-2013-2014>.

<sup>32</sup> 52 U.S.C. § 30116(f).

<sup>33</sup> 11 C.F.R. § 110.10.

<sup>34</sup> 52 U.S.C. § 30101(26); 11 C.F.R. § 100.33(a), (b).

<sup>35</sup> See 52 U.S.C. § 30102(e)(2); see also 11 C.F.R. § 101.2(a).

1 circumstances surrounding specific financial transactions to determine whether they were  
2 contributions.<sup>36</sup> Based on the evidence here, the \$555,000 in payments that Brown made to Yu,  
3 which were then used for campaign expenses, were not Yu's personal funds and constitute  
4 excessive contributions by Brown.

5 Bank records support a finding that Brown's payments were to provide funds to the  
6 Committee as needed, and the Contract was structured to provide Yu with the means to do so.  
7 They show that most of Brown's payments under the Contract were made when the Committee  
8 needed funds to cover its expenses or when its account was overdrawn. Significantly, 90% of  
9 Brown's payments to Yu on or after October 1, 2013, were made when he was in a position to  
10 know the Committee's finances because he signed most of the Committee's checks after  
11 becoming an account signatory, effectively acting in the manner of a treasurer. For example:

- 12 • Yu deposited Brown's November 25, 2013, check for \$50,000 into his joint  
13 account, withdrew \$20,000 from the account the next day and immediately  
14 deposited those funds into the Committee account when its balance was only  
15 \$1,005.21.<sup>37</sup> The deposit ensured sufficient funds were available to cover four  
16 Committee checks dated November 26 and 27, 2013, and signed by Brown,  
17 including a \$10,712.50 check to one of the Committee's major vendors;  
18
- 19 • Yu deposited Brown's December 10, 2013, check for \$25,000 into his joint  
20 account, and the next day, he withdrew \$25,000 from the account and deposited  
21 it into the Committee account when the Committee's account balance was only  
22 \$2,371.38. Those funds were needed to cover a \$21,744.70 check to the  
23 Committee's lawyer dated December 10, 2013, that Brown had signed;  
24
- 25 • Following Yu's decision to run for a House seat instead of the U.S. Senate seat,  
26 Yu deposited into his joint account a \$20,000 check dated March 12, 2014, and  
27 a \$250,000 check dated March 24, 2014, both from Brown. Yu then wrote two  
28 checks to the Committee in the amounts of \$20,000 and \$240,000 that were

<sup>36</sup> See *supra* note 16.

<sup>37</sup> The Yus also made a \$5,000 phone payment from the joint account to Bank of America following the deposit of Brown's \$50,000 check. The payment was applied to the balance on Ms. Yu's credit card that was used to pay campaign expenses.

1 deposited into that account on March 13 and March 27, 2014, when the account  
2 balances were \$3,704 and \$5,142.20, respectively. These two checks comprised  
3 95% of the funds deposited into the Committee's account in March and April  
4 2014 and were sufficient to cover the \$206,066 in Committee disbursements  
5 made during those months; and  
6

7 • Yu deposited into his joint account two checks from Brown dated May 14 and  
8 May 15, 2014 in the amounts of \$30,000 and \$40,000, respectively. On the  
9 same day, he then wrote and deposited two checks to the Committee in the same  
10 amounts. At the time the \$30,000 check was deposited into the Committee  
11 account, the account was overdrawn by \$1,361.45. Brown's checks comprised  
12 95% of the receipts deposited into the Committee's account in May 2014, the  
13 month of the primary election.  
14

15 Brown's sworn statements that he made the payments "as cash became available to me"  
16 may be true, but they also do not conflict with the conclusion that the payments were most often  
17 made when the Committee's bank balance was especially low or overdrawn, or in at least once  
18 instance, when checks would not otherwise have been covered. And Brown's explanation that  
19 his payments under the Contract "had nothing to do with Mr. Yu's candidacy" is not credible in  
20 light of Brown's dual role as Yu's campaign chairman and his effectively acting as the  
21 Committee's treasurer, which put him in a position to be fully familiar with the campaign's  
22 financial needs.

23 Further aspects of the record also support a conclusion that the transaction involving the  
24 Property was in effect a loan. Brown's early, contemporaneous notations of the word "loan" on  
25 the memo lines on two of Brown's early checks to Yu are significant. Brown's "Bertram Road  
26 Purchase" notations on his May 2014 checks to Yu carry less weight because they were made  
27 after the filing of the January 23, 2014, *Sua Sponte* Submission in which Brown and others

1 represented that Brown's payments were "collateral payments" from Brown to Yu under "what  
2 they have represented to us as a *bona fide* business agreement" to purchase real estate.<sup>38</sup>

3       Importantly, land records confirm that the Yus have never conveyed or recorded title to  
4 the Property to Brown for his purported ownership interest, a fact inconsistent with one of the  
5 hallmarks of a real estate sale. In his affidavit, Brown averred that he wanted to structure the  
6 Contract to give him the option of recording his ownership interest so he could choose to remain  
7 a "passive investor," but the relevant Contract provision envisions conveyance *and* recording,  
8 stating, "Seller agrees to *convey the percentage purchased at time of purchaser's choosing and*  
9 *update the ownership information with the county* for a marketable title and limited warranty  
10 deed (emphasis added)." Notably, Brown has not provided a copy of an unrecorded deed to  
11 support his assertion that he holds a partial ownership interest and remains "a passive investor."<sup>39</sup>  
12 Moreover, Richmond County property records confirm that no deed has been conveyed and  
13 recorded more than four years after Brown's last payment under the Contract.<sup>40</sup>

14       Additionally, Brown's explanation for including an "unconventional" option to choose  
15 the time of conveyance and recording — that he did not want to expose himself to the liability of  
16 insuring a vacant building — is inconsistent with publicly available information that the Property

<sup>38</sup> *Sua Sponte* Submission at 1-2.

<sup>39</sup> Brown Resp. at 7; 2nd Brown Aff. ¶ 9.

<sup>40</sup> In addition to the fact that the Yus' have not conveyed to Brown his ownership interest or recorded a deed evidencing it, a search of Richmond County real estate records reveals no record that a real estate transfer tax was paid in connection with the purported sale, which is required under Georgia law. Georgia law imposes a real estate transfer tax "on each deed, instrument or other writing by which any lands . . . or other realty sold is . . . transferred or otherwise conveyed to the purchaser" when the value of the interest or property conveyed exceeds \$100. Ga. Code Ann. § 48-6-1. Payment of a transfer tax is a prerequisite to recording a deed, and it is a misdemeanor to willfully evade or defeat "in any manner" the payment of the transfer tax. *See* Ga. Code Ann. §§ 48-6-4; 48-6-10. A contractual provision that permits an indefinite delay in conveying an ownership interest and recording a deed therefore appears problematic.

1 was not vacant as of the date of the Contract or indeed during the entire period when Brown  
2 made all the payments under the Contract.

3 Finally, the fact that the Brown did not obtain an independent appraisal prior to entering  
4 into the Contract, a customary step in purchasing real estate to determine its fair market value,<sup>41</sup>  
5 the Yus' actions with the Richmond County Board of Assessors to lower the Property's fair  
6 market value, and the Yus' unsuccessful listing of the property for \$890,000, substantially less  
7 than the \$1.3 million value on placed on the Property in the Contract, cast doubt as to whether  
8 the Contract was a *bona fide* sale for a 50% ownership interest of \$650,000.<sup>42</sup>

9 In sum, the campaign purpose of the Contract is supported by the timing of Brown's  
10 payments, virtually all of which were made when the campaign account balance was very low,  
11 and most of which were made when Brown was the campaign chairman and acting in the manner  
12 of a treasurer, handling the Committee's finances and signing its checks. The evidence,

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<sup>41</sup> The Commission has recognized the importance of an independent appraisal in determining the fair market value of property when deciding whether a candidate sold it for more than the fair market value, thus resulting in an excessive contribution. For instance, in MUR 4825, discussed at note 35, the Commission authorized the Office of General Counsel to expend funds to obtain an independent appraisal of the fair market value of the respondent's property in evaluating whether its sale was a contribution. See Certification ¶ 2 (July 24, 2001) and General Counsel's Report #3 at 2-3, MUR 4825 (Gex Williams) (describing Commission's instructions to OGC and results of the appraisal and title examination). See also Adv. Op. 1984-60 (Mulloy) at n.5 (Jan. 11, 1985) (noting that the Commission would view an appraisal by an expert using an acceptable appraisal methods as *prima facie* evidence of the property's usual and normal market price but would not rule out "the use of other valuation methods that would reliably establish such price or value.").

<sup>42</sup> To the extent the transaction between Brown and the Yus could be considered a *bona fide* sale, Brown appears to have paid more than the fair market value, resulting in an excessive contribution. The Commission has considered when the sale of a candidate's interest in real property constitutes a contribution in the context of a proposed plan by a candidate to retire campaign debt by selling his interest in real estate held in a family-owned partnership to either an outside party or a family member, noting that a candidate's personal funds include proceeds from the sale of a candidate's investments. AO 1984-60 at 2. The Commission determined that a contribution would occur where (1) a candidate sells a property to use the proceeds to pay campaign expenses and debts and (2) the property is sold for price greater than the property's "normal and usual market price." *Id.* As Brown observes in his response, the Commission has equated the term "fair market value" as used to refer to real property with the "usual and normal cost" standard in 11 C.F.R. § 100.52(d)(1). Commission regulations define "the usual and normal" cost as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

1 including the "loan" memo notations, the failure to obtain an independent appraisal of the  
2 Property or convey marketable title and a limited warranty deed, and the Yus' attempts to  
3 decrease the value of the Property on a real estate sale listing and by seeking a lower property  
4 assessment, further cast doubt that the transaction between Brown and the Yus was a *bona fide*  
5 sale of property rather than a loan.

6 Under the Commission's regulations, a contribution by an LLC with a single natural  
7 person member that does not elect to be treated as a corporation by the Internal Revenue Service  
8 shall be attributed only to that single member.<sup>43</sup> Accordingly, there is reason to believe that the  
9 \$555,000 Yu received from Brown and WayneWorks and transferred to the Committee or  
10 otherwise used to pay Committee expenses were not Yu's personal funds but instead proceeds of  
11 a loan from Brown, and thus, a contribution. Brown had made a direct \$3,500 contribution to Yu  
12 on July 3, 2013, \$900 more than the 2014 per-election contribution limit, which was not refunded  
13 after Yu lost the primary election. Therefore, there is reason to believe that Brown made  
14 excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A).

<sup>43</sup> See 11 C.F.R. § 110.1(g)(4).